

SERVICE DATE – OCTOBER 19, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1162X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN  
MONROE COUNTY, N.Y.

Decided: October 18, 2012

This decision reopens this proceeding to remove the modified Section 106 historic preservation condition previously imposed.

Consolidated Rail Corporation (Conrail) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 8.50 miles of its line of railroad between approximately milepost 0.10 and approximately milepost 7.20 (Rochester Running Track) and between approximately milepost 92.90 and approximately milepost 94.10 (Ontario Industrial Track), in Monroe County, N.Y. (the Line). Notice of the exemption was served and published in the Federal Register on June 20, 1996 (61 Fed. Reg. 31,607). The exemption became effective on July 20, 1996.

By decision served on July 22, 1996, at the request of the Board's Section of Environmental Analysis (SEA)<sup>1</sup> the proceeding was reopened and the exemption was made subject to a historic preservation condition under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA) and another condition. By decision served on May 8, 1997 (May 1997 decision), at the request of SEA, the proceeding again was reopened to modify the conditions. The historic preservation condition, as modified, required Conrail to retain its interest in and take no steps to alter the historic integrity of the swing bridge at milepost 94.0 of the Ontario Industrial Track (known as the Hojack Swing Bridge) until completion of the Section 106 process of NHPA.

In a Supplemental Final Environmental Assessment dated October 18, 2012, OEA states that, since the issuance of the above-mentioned decisions, CSX Transportation, Inc. (CSXT) has assumed ownership of the Line and the Hojack Swing Bridge from Conrail. According to OEA, the U.S. Coast Guard and the Army Corps of Engineers informed CSXT, as the new owner, that that bridge had become a hazard to navigation and must be dismantled and removed. As a result, CSXT began working with the New York Department of Environmental Conservation (NYDEC) to secure clearance for the removal of the bridge.

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<sup>1</sup> SEA is now the Office of Environmental Analysis (OEA).

According to OEA, NYDEC drafted a Letter of Resolution (Letter) setting out a mitigation plan for documenting the bridge and allowing for its removal pursuant to the New York State Historic Preservation Act of 1980. The Letter was signed by NYDEC, the New York State Historic Preservation Officer, and CSXT.

OEA consulted with the Advisory Council on Historic Preservation regarding whether the Letter would be sufficient to mitigate any adverse effects (per Section 106) that would result from the Board's approval of the abandonment. The Advisory Council recommended that OEA prepare a Memorandum of Agreement (MOA) setting forth the terms of the Letter and circulate the MOA for signature to the parties that signed the Letter.

OEA did so, and states that the MOA was fully executed by the signatories on October 16, 2012, and that a copy of the executed MOA was provided to the Advisory Council and the MOA signatories on October 17, 2012, as required under Section 106. OEA advises that execution of the MOA completes the final step in the Section 106 process required under 36 C.F.R. pt. 800.

For the foregoing reasons, OEA recommends that the Section 106 historic preservation condition, as modified in the May 1997 decision, be removed. Accordingly, based on OEA's recommendation, this proceeding will be reopened, and the Section 106 historic preservation condition, as modified in the May 1997 decision, will be removed.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the Section 106 historic preservation condition, as modified in the May 1997 decision, is removed.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.